

DISCLAIMER

This electronic version of an SCC order is for informational purposes only and is not an official document of the Commission. An official copy may be obtained from the [Clerk of the Commission, Document Control Center](#).

COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, MAY 10, 2002

COMMONWEALTH OF VIRGINIA, ex rel.

NORMAN E. MATTSON, et al.,
PETITIONERS

v.

CASE NO. PUE-2002-00099

MARINERS LANDING WATER SYSTEM,
DEFENDANTS

For relief under Va. Code.
§ 13.1-620 G

JOINT APPLICATION OF

J.W. HOLDINGS, INC.

and

CASE NO. PUE-2002-00235

MARINERS LANDING WATER &
SEWER COMPANY, INC.

For authority to acquire and
dispose of utility assets
pursuant to the Utility Transfers
Act and for the issuance of
certificates of public convenience
and necessity pursuant to
Va. Code §§ 56-265.2 and 56-265.3

PRELIMINARY ORDER

On March 8, 2001, pursuant to § 13.1-620 G of the Code of
Virginia ("Code"), Norman E. Mattson filed with the State

Effective April 9, 2002, the new Case Management System requires
that the case number format for all Commission orders change
from, e.g., PUE010663 to the following: PUE-2001-00663.

Corporation Commission ("Commission") a petition containing signatures of customers of the Mariners Landing Water System.¹ The water system serves residents of the Mariners Landing Community on Smith Mountain Lake in Bedford County, Virginia. Additional signatures were filed with the Commission on March 18, 2002.

As supplemented, the petition alleges that the Company has 72 water system customers, and such petition contains the signatures of 51 of those customers. The petition argues that, pursuant to § 13.1-620 G of the Code, since J.W. Holdings is serving more than fifty customers, it is required to incorporate as a public service company and to obtain a certificate of public convenience and necessity. The petition requests the Commission to assume jurisdiction over the Company pursuant to § 13.1-620 G of the Code. The petition further requests the Commission to suspend, subject to possible refund, rate increases and new fees until such time as the Commission has completed its review, including a public hearing, and issued an

¹ The petition refers to Mariners Landing Water System. J.W. Holdings, Inc. ("J.W. Holdings" or the "Company") is the owner and operator of the system and currently provides water service to the customers. In this Order, where the petitioners have referred to the Mariners Landing Water System, we will refer to J.W. Holdings or the Company.

order establishing the appropriate rates and fees to be charged for water service.²

On April 16, 2002, J.W. Holdings and Mariners Landing Water & Sewer Company, Inc. ("Mariners Landing Company"), (collectively, the "Applicants"), filed an application requesting authority pursuant to the Utility Transfers Act, Chapter 5 of Title 56 of the Code, for J.W. Holdings to dispose of the water assets of the water system and for Mariners Landing Company to acquire such assets pursuant to a license agreement executed by the Applicants.³ Under the license agreement, Mariners Landing Company will have the sole right to occupy and to use all of J.W. Holdings' water assets to provide water service to the residents of the Mariners Landing Community. The Applicants further request, pursuant to §§ 56-265.2 and 56-265.3 of the Code, certificates of public convenience and necessity for Mariners Landing Company to acquire the above-referenced assets and to provide the water service. Mariners Landing

² On March 13, 2002, J.W. Holdings filed a letter in response to the petition expressing its concern that customers had received the impression that the various property owners associations had endorsed the filing of the petition, when the Company has determined that no formal action was ever taken by the property owners associations. J.W. Holdings also states that it does not appear to the Company that all customers of the water system were notified of the petition and that a majority of customer signatures was obtained.

³ On May 8, 2002, the Applicants filed a Motion for Expedited Hearing stating that the water system serves 93 customers and that there are an additional 50 undeveloped lots. In that Motion, the Applicants state that Mariners Landing Company requires its certificate as soon as possible to obtain a loan for capital financing to provide continuing adequate water service to its existing and proposed new customers.

Company also requests approval of its proposed rates, rules, and regulations of service.

NOW THE COMMISSION, having considered the petition filed by Norman E. Mattson, et al., and the joint application filed by J.W. Holdings and Mariners Landing Company is of the opinion and finds that the petition filed in Case No. PUE-2002-00099 and the application filed in Case No. PUE-2002-00235 should be addressed together and incorporated into one docket. The petition and the application matters should be docketed as Case No. PUE-2002-00235.

Pursuant to § 56-265.3 of the Code, a public utility may not furnish public utility service without first obtaining from the Commission a certificate of public convenience and necessity authorizing it to furnish such service. Section 56-265.1 of the Code defines a public utility as any company that owns or operates facilities for, among other things, the furnishing of water and excludes water companies serving less than fifty customers from this definition. As noted in the Company's pleadings filed herein, J.W. Holdings is currently providing water service to more than fifty customers. We note that the Company has not obtained a certificate from the Commission as required by § 56-265.3 of the Code, and, therefore, we find J.W. Holdings to be in violation of such statute. Pursuant to § 56-240, if a company is determined to be in violation of § 56-

265.3, the rates of such company shall be interim and subject to refund until such time as an investigation has been completed and the appropriateness of the rates has been determined. We will, therefore, declare J.W. Holdings' rates interim and subject to refund at this time.

We will grant the request for a hearing and direct Commission Staff to respond to the Applicants' Motion for Expedited Hearing. We will appoint a Hearing Examiner to conduct all further proceedings in this matter.

Accordingly, IT IS ORDERED THAT:

(1) The petition filed in Case No. PUE-2002-00099 and the application filed in Case No. PUE-2002-00235 shall be considered together and shall be docketed as Case No. PUE-2002-00235. All associated papers shall be filed therein.

(2) J.W. Holdings' rates shall be interim and subject to refund as of the date of this Order while the reasonableness of the Company's rates is being investigated.

(3) On or before May 20, 2002, Commission Staff shall file a Response to the Applicants' Motion for Expedited Hearing.

(4) Pursuant to 5 VAC 5-10-520 of the Commission's Rules of Practice and Procedure ("Rules"), a Hearing Examiner is appointed to conduct all further proceedings in this matter, including establishing a procedural schedule for a public hearing.

(5) The Applicants shall make a copy of this Order and the application and exhibits available for public inspection during regular business hours at the Company's office at 1037 Whitetail Drive, Huddleston, Virginia 24104.